

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CHESTER UPLAND SCHOOL DISTRICT, et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	NO. 12-132
et al.	:	

ORDER RE: DEFENDANTS' MOTION TO DISMISS

_____AND NOW, this 17th day of April, 2012, upon careful consideration of Defendants' Motion to Dismiss (ECF No. 96), the Memorandum filed in support thereof (ECF No. 97), Plaintiffs' Response (ECF No. 114) and "Corrected" Response (ECF No. 116), Defendants' Reply (ECF No. 119), it is hereby ORDERED as follows:

1. Defendants' Motion to Dismiss (ECF No. 96) is GRANTED in part and DENIED in part. Specifically:
 - a. Defendants' Motion to Dismiss is DENIED as to Plaintiffs' Counts I and IV.
 - b. Defendants' Motion to Dismiss is DENIED as to Plaintiffs' Count II to the extent the claim is asserted under the IDEA and Section 504. The Section 504 claim shall proceed only against the Department of Education.
 - c. Defendants' Motion to Dismiss is DENIED as to COUNT III of Intervenor PA-NAACP and the District Parents.
 - d. Defendants' Motion to Dismiss is GRANTED, without prejudice, as to the Charter School Parents' Count VI, pursuant to April 2, 2012 correspondence from counsel for the Charter School Parents withdrawing

the claim voluntarily.

- e. Defendants' Motion to Dismiss is GRANTED, without prejudice, to Plaintiff's Count II to the extent it is asserted under the U.S. Constitution.
- f. Defendants' Motion to Dismiss is GRANTED, without prejudice, as to Plaintiff's Counts III and V, and Counts I and II of Intervenors PA-NAACP and the District Parents.
- g. Defendants' Motion to Dismiss is GRANTED, with prejudice, as to any claim asserted under Title I of the ESEA/No Child Left Behind.

2. Plaintiffs and Intervenors are GRANTED ninety (90) days to file a Second Amended Complaint as specified in the accompanying Memorandum of Law. The Court suggests that Plaintiffs and Intervenors file a single Second Amended Complaint, with Counts beginning at roman numeral VI.

3. Plaintiffs' Motion for a Preliminary Injunction (ECF No. 2) and Motion for a Supplemental Temporary Restraining Order (ECF No. 36) are DENIED as moot.

BY THE COURT:

s/Michael M. Baylson

Michael M. Baylson, U.S.D.J.